

LEGISLATIVE BILL 641

Approved by the Governor May 7, 2001

Introduced by Landis, 46

AN ACT relating to the Consumer Rental Purchase Agreement Act; to amend sections 69-2103 to 69-2105, 69-2108 to 69-2110, 69-2112, 69-2113, and 69-2115, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change disclosure requirements; to change lessor liability; to change provisions relating to fees and charges; to authorize certain incidental contract provisions; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 69-2103, Reissue Revised Statutes of Nebraska, is amended to read:

69-2103. For purposes of the Consumer Rental Purchase Agreement Act:

(1) Advertisement shall mean a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer rental purchase agreement but shall not include in-store merchandising aids such as window signs and ceiling banners;

(2) Cash price shall mean the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property;

(3) Consumer shall mean a natural person who rents property under a consumer rental purchase agreement;

(4) Consumer rental purchase agreement shall mean an agreement which is for the use of property by a consumer primarily for personal, family, or household purposes, which is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, which is automatically renewable with each payment, and which permits the consumer to become the owner of the property. A consumer rental purchase agreement in compliance with the act shall not be construed to be a lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16), as such regulation existed on the effective date of this act, and section 1602(g) of the Truth in Lending Act, 15 U.S.C. 1601 et seq. 15 U.S.C 1602(g), as such section existed on the effective date of this act, or a lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(a)(6) 213.2(e), as such regulation existed on the effective date of this act. Consumer rental purchase agreement shall not include:

(a) Any lease for agricultural, business, or commercial purposes;

(b) Any lease made to an organization;

(c) A lease or agreement which constitutes an installment sale or installment contract as defined in section 45-335;

(d) A security interest as defined in section 1-201, Uniform Commercial Code; and

(e) A home solicitation sale as defined in section 69-1601;

(5) Consummation shall mean the occurrence of an event which causes a consumer to become contractually obligated on a consumer rental purchase agreement;

(6) Department shall mean the Department of Banking and Finance;

(7) Lease payment shall mean a payment to be made by the consumer for the right of possession and use of the property for a specific lease period but shall not include taxes imposed on such payment;

(8) Lease period shall mean a week, month, or other specific period of time, during which the consumer has the right to possess and use the property after paying the lease payment and applicable taxes for such period;

(9) Lessor shall mean a person who in the ordinary course of business operates a commercial outlet which regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement; ~~and~~

~~(8)~~ (10) Property shall mean any property that is not real property under the laws of this state when made available for a consumer rental purchase agreement; ~~and~~

(11) Total of payments to acquire ownership shall mean the total of all charges imposed by the lessor and payable by the consumer as a condition of acquiring ownership of the property. Total of payments to acquire ownership shall include lease payments and any initial nonrefundable administrative fee or required delivery charge but shall not include taxes,

late charges, reinstatement fees, or charges for optional products or services.

Sec. 2. Section 69-2104, Reissue Revised Statutes of Nebraska, is amended to read:

69-2104. (1) Before entering into any consumer rental purchase agreement, the lessor shall disclose to the consumer the following items as applicable:

(a) A brief description of the leased property sufficient to identify the property to the consumer and lessor;

(b) The number, amount, and timing of all ~~lease payments necessary~~ included in the total of payments to acquire ownership; of the property;

(c) The total ~~amount of all initial and periodic of payments and other charges to acquire ownership; of the property pursuant to the ownership provisions of the consumer rental purchase agreement;~~

(d) A statement that the consumer will not own the property until the consumer has ~~paid made the stated number of payments and the total dollar amount of payments necessary~~ plus applicable taxes;

(e) A statement that the total of payments to acquire ownership does not include other charges such as late fees taxes, late charges, reinstatement fees, or charges for optional products or services the consumer may have elected to purchase and that the consumer should see the ~~contract rental purchase agreement~~ for an explanation of these charges;

(f) A statement that the consumer is responsible for the fair market value, remaining rent, early purchase option amount, or cost of repair of the property, whichever is less, if it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used. A statement that indicates that new property is used shall not be a violation of the Consumer Rental Purchase Agreement Act;

(h) A statement of the cash price of the property. When the agreement involves a lease for two or more items, a statement of the aggregate cash price of all items shall satisfy the requirement of this subdivision;

(i) The total amount of the of initial payments required to be paid before consummation of the agreement or delivery of the property, whichever occurs later, and an itemization of the components of the initial payment, including any initial nonrefundable administrative fee or delivery charge, lease payment, taxes, or fee or charge for optional products or services;

(j) A statement clearly summarizing the terms of the consumer's options to purchase, including a statement that at any time after the first periodic payment is made the consumer may acquire ownership of the property by tendering an amount which may not exceed fifty-five percent of the difference between the total of payments necessary to acquire ownership and the total of lease payments the consumer has paid on the property at that time;

(k) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility and a statement that if any part of a manufacturer's warranty covers the leased property at the time the consumer acquires ownership of the property, such warranty shall be transferred to the consumer if allowed by the terms of the warranty; and

(1) The date of the transaction and the names of the lessor and the consumer.

(2) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., as such act existed on the effective date of this act, compliance with such act shall satisfy the requirements of this section.

(3) Subsection (1) of this section shall not apply to a lessor who complies with the disclosure requirements of the Consumer Credit Protection Act, 15 U.S.C. 1667a, as such section existed on the effective date of this act, with respect to a consumer rental purchase agreement entered into with a consumer.

Sec. 3. Section 69-2105, Reissue Revised Statutes of Nebraska, is amended to read:

69-2105. (1) In a consumer rental purchase agreement involving more than one consumer, a lessor need disclose the items required by the Consumer Rental Purchase Agreement Act to only one of the consumers who is primarily obligated. In a consumer rental purchase agreement involving more than one lessor, only one lessor need make the required disclosures.

(2) The disclosures required under the act shall be made at or before consummation of the consumer rental purchase agreement.

(3) The disclosures shall be made using words and phrases of common meaning in a form that the consumer may keep. For purposes of satisfying the disclosure requirements of the act, the terms lease and rent shall be considered synonymous. The required disclosures shall be set forth clearly

and conspicuously. The disclosures shall be placed all together on the front side of the consumer rental purchase agreement or on a separate form. The form setting forth the required disclosures shall contain spaces for the consumer's signature and the date appearing immediately below the disclosures. If the disclosures are made on more than one page, each page shall be signed by the consumer. The requirements of this section shall not have been complied with unless the consumer signs the statement and receives at the time the disclosures are made a legible copy of the signed statement. The inclusion in the required disclosures of a statement that the consumer received a legible copy of those disclosures shall create a rebuttable presumption of receipt.

(4) Information required to be disclosed may be given in the form of estimates. Estimates shall be identified as such.

(5) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of the act.

(6) Information in addition to that required by section 69-2104 may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or detract attention from the required information.

(7) The department shall adopt and promulgate rules and regulations establishing requirements for the order, acknowledgment by initialing, and conspicuous placement of the disclosures set forth in section 69-2104. Such rules and regulations may allow the disclosures to be made in accordance with model forms prepared by the department.

(8) The terms of the consumer rental purchase agreement, except as otherwise provided in the Consumer Rental Purchase Agreement Act, shall be set forth in not less than eight-point standard type or such similar type as prescribed in rules and regulations adopted and promulgated by the department.

(9) Every consumer rental purchase agreement shall contain, immediately above or adjacent to the place for the signature of the consumer, a clear, conspicuous, printed or typewritten notice, in boldface, ten-point type, in substantially the following language:

NOTICE TO CONSUMER -- READ BEFORE SIGNING

a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT, INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

Sec. 4. Section 69-2108, Reissue Revised Statutes of Nebraska, is amended to read:

69-2108. Each consumer rental purchase agreement shall:

(1) Provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property upon expiration of any lease term; and

(2) Contain a provision for reinstatement which shall include, but not be limited to:

(a) Permitting a consumer who fails to make a timely ~~lease rental~~ payment to reinstate the agreement without losing any rights or options which exist under the agreement by the payment of all past-due ~~lease rental~~ charges, the reasonable costs of pickup, redelivery, and any refurbishing, and any applicable late fee within five business days of the renewal date of the agreement if the consumer pays monthly or within three business days of the renewal date of the agreement if the consumer pays more frequently than monthly; and

(b) Permitting the consumer to reinstate the agreement during a period of not less than thirty days after the date of the return of the property if the consumer promptly returns or voluntarily surrenders the property upon request by the lessor or its agent. In the event the consumer has paid not less than sixty percent and not more than eighty percent of the ~~amount called for under the contract to obtain total of payments to acquire~~ ownership, the reinstatement period shall be extended to a total of ninety days after the date of the return of the property. In the event the consumer has paid eighty percent or more of the ~~amount called for under the contract to obtain total of payments to acquire~~ ownership, the reinstatement period shall be extended to a total of one hundred eighty days after the date of the return of the property.

Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Sec. 5. Section 69-2109, Reissue Revised Statutes of Nebraska, is

amended to read:

69-2109. A lessor shall not:

(1) Charge a penalty for early termination of a consumer rental purchase agreement or for the return of an item at any point except for those charges authorized by section 69-2110;

(2) Require payment by a cosigner of the consumer rental purchase agreement of any fees or charges which could not be imposed upon the consumer as part of the consumer rental purchase agreement; ~~or~~

(3) ~~Assess~~ Require payment of any charges unless ~~or utilize forms which reference any charges except for charges~~ specifically authorized by subsection (1) of section 69-2110; or

(4) Increase the lease payment or the total of payments to acquire ownership as a result of a consumer's declining to purchase liability damage waiver.

Sec. 6. Section 69-2110, Reissue Revised Statutes of Nebraska, is amended to read:

69-2110. (1) The lessor may contract for and receive:

(a) ~~An an~~ initial nonrefundable administrative fee of not more than ten dollars;

(b) ~~A - If a security deposit, if is required by the lessor,~~ the amount of the deposit and the conditions under which all or a part of the deposit will be returned ~~shall be is~~ disclosed with the disclosures required by sections 69-2104 and 69-2105; ~~-~~

(c) ~~A (-2) The lessor may contract for and receive a~~ delivery charge of not more than ten dollars or, in the case of a consumer rental purchase agreement covering more than five items, a delivery charge of not more than twenty-five dollars, ~~-~~ A delivery charge may be assessed only if (i) the lessor actually delivers the items to the place designated by the consumer, (ii) ~~and~~ the delivery charge is disclosed with the disclosures required by sections 69-2104 and 69-2105, and (iii) ~~such charge is -~~ The delivery fee may be assessed in lieu of and not in addition to the administrative fee in subsection (1) of this section; ~~-~~

(d) ~~Late (-3) The parties may contract for late fees as follows:~~

(~~a~~) (i) For consumer rental purchase agreements with monthly renewal dates, a late fee of not more than five dollars may be assessed on any payment not made within five business days after the payment is due; ~~and~~

(~~b~~) (ii) For consumer rental purchase agreements with ~~weekly or biweekly~~ more frequent than monthly renewal dates, a late fee of not more than three dollars may be assessed on any payment not made within three business days after payment is due; ~~and -~~

(iii) A late fee on a consumer rental purchase agreement may be collected only once on any accrued payment no matter how long such payment remains unpaid, may be collected at the time it accrues or at any time thereafter, and shall not be assessed against a payment that is timely made even though an earlier late fee has not been paid in full; ~~and -~~

(~~4~~) ~~The lessor may contract for and receive a~~ (e) In addition to any applicable late fee, a reinstatement fee of not more than five dollars which may be assessed only if the consumer exercises the reinstatement provision of the agreement. The reinstatement fee may be assessed in addition to any applicable late fee.

(2) The parties may contract for fees for liability damage waiver or similar products or services if:

(a) Purchasing the product or service is optional and is not a factor in the approval of the lessor of the consumer rental purchase transaction and such facts are clearly disclosed in writing to the consumer; and

(b) The consumer has signed or initialed an affirmative written request to purchase the product or service after receiving a written disclosure of the cost of such product or service.

(3) In addition to the requirements in subsection (2) of this section a contract containing fees for liability damage waiver shall include the following:

(a) For a consumer rental purchase agreement with scheduled lease payments more frequent than monthly, the amount of the liability damage waiver shall not exceed eight percent of any lease payment or two dollars for each scheduled lease payment, whichever is greater; and

(b) For a consumer rental purchase agreement with monthly lease payments, the amount of the liability damage waiver shall not exceed eight percent of any lease payment or five dollars for each scheduled lease payment, whichever is greater.

(4) The parties may contract for other products or services incidental to the consumer rental purchase transaction which do not evade the

provisions of the Consumer Rental Purchase Agreement Act.

Sec. 7. Section 69-2112, Reissue Revised Statutes of Nebraska, is amended to read:

69-2112. (1) Any advertisement for a consumer rental purchase agreement which refers to or states the amount of any payment or the right to acquire ownership for any specific item shall also state clearly and conspicuously the following if applicable:

(a) That the transaction advertised is a consumer rental purchase agreement;

(b) The total ~~dollar amount~~ of payments ~~necessary~~ to acquire ownership; and

(c) That the consumer acquires no ownership rights ~~if~~ until the total of payments ~~dollar amount necessary~~ to acquire ownership is ~~not~~ paid.

(2) Any owner or employee of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) Subsection (1) of this section shall not apply to an advertisement which does not refer to a specific item of property, which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or any similar directory of business.

(4) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., as such act existed on the effective date of this act, compliance with such act shall satisfy the requirements of this section.

Sec. 8. Section 69-2113, Reissue Revised Statutes of Nebraska, is amended to read:

69-2113. (1) A lessor who fails to comply with the requirements of sections 69-2104 to 69-2110 with respect to a consumer shall be liable to the consumer for:

(a) The greater of the actual damages sustained by the consumer as a result of the violation or, in the case of an individual action, twenty-five percent of the total of payments ~~necessary~~ to acquire ownership but not less than one hundred dollars nor more than one thousand dollars; and

(b) The costs of the action and reasonable attorney's fees.

(2) In the case of an advertisement, any lessor who fails to comply with the requirements of section 69-2112 with regard to any person shall be liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.

(3) When there is more than one lessor, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been made, liability shall be imposed jointly and severally on all lessors.

(4) When there is more than one consumer, there shall be only one recovery of damages under subsection (1) of this section for a violation of the Consumer Rental Purchase Agreement Act.

(5) Multiple violations in connection with a single consumer rental purchase agreement shall entitle the consumer to a single recovery under this section.

(6) A consumer shall not take any action to offset any amount for which a lessor is potentially liable under subsection (1) of this section against any amount owed by the consumer unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action to which the lessor was a party. This subsection shall not bar a consumer then in default on the obligation from asserting a violation of the act as an original action or as a defense or counterclaim to an action brought by the lessor to collect an amount owed by the consumer.

(7) In connection with any transaction covered under the act, the lessor shall preserve evidence of compliance with the provisions of the act for not less than two years from the date of consummation of the agreement.

Sec. 9. Section 69-2115, Reissue Revised Statutes of Nebraska, is amended to read:

69-2115. (1) A lessor shall not be liable for a violation under section 69-2113 if the lessor proves by a preponderance of the evidence that the violation was not intentional, that the violation resulted from a bona fide error, and that the lessor maintained procedures reasonably adapted to avoid such an error. A bona fide error shall include, but not be limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to requirements of the Consumer Rental Purchase Agreement Act shall not be considered a bona fide error.

(2) A lessor shall not be liable under the act for any act done or omitted in good faith in conformity with any rule, regulation, or interpretation issued, adopted, or promulgated by the Attorney General, by the

department, or by an official duly authorized by the Attorney General or the department even if after the act or omission has occurred the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(3) With respect to the dollar amount of any disclosure required by the act, a lessor shall not be liable if the dollar amount actually disclosed is greater than the dollar amount required to be disclosed by the act.

Sec. 10. Original sections 69-2103 to 69-2105, 69-2108 to 69-2110, 69-2112, 69-2113, and 69-2115, Reissue Revised Statutes of Nebraska, are repealed.